

N.D.A.G. Letter to Wagner (Jan. 6, 1992)

January 6, 1992

Mr. Bernard Wagner
Chairman
Administrative Committee on
Veterans Affairs
Sanborn, ND 58480

Dear Mr. Wagner:

Thank you for your August 21, 1991, letter concerning whether the Department of Veterans' Affairs or the North Dakota Veterans' Home must have an appropriation to spend moneys the Administrative Committee on Veterans' Affairs authorizes for special projects. I apologize for the delay in responding.

The 1991 Legislative Assembly enacted House Bill No. 1009 providing an appropriation for defraying the expenses of the Veterans' Home (hereinafter "home") and the Department of Veterans' Affairs (hereinafter "department"). 1991 N.D. Sess. Laws ch. 9. Section 2 of House Bill No. 1009 earmarked income to the Veterans' postwar trust fund as follows:

The amount of \$246,876, or so much thereof as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is interest earnings of the veterans' postwar trust fund for the purpose of defraying costs related to the completion of the nursing home facility of \$100,000, equipment purchases of \$76,876, and operating expenses of \$70,000.

Additionally, House Bill No. 1009 designated \$10,000 of fund income toward the purchase of equipment for the department. 1991 N.D. Sess. Laws ch. 9, § 4. The amount of \$246,876 plus the \$10,000 represents the bulk of the estimated investment income on the fund for the biennium beginning July 1, 1991, and ending June 30, 1993. However, a review of the minutes taken from the House Appropriations Committee's hearing on House Bill 1009

indicate that the Treasurer's office estimated income derived from the fund would be in the amount of \$396,082.00. Hearing on H. 1009 Before the House Comm. on Appropriations, 52nd N.D. Leg. (January 9, 1991) If this income level is realized, there would be approximately \$140,000.00 more income to the Fund than the Legislature committed to the nursing home facility and the department.

You seek advice concerning whether the Administrative Committee may spend the income in excess of the income earmarked by H.B. 1009.

The authority for the Administrative Committee on Veterans' Affairs (hereinafter "committee") to designate income from the veteran's postwar trust fund to any project, whether "special" or not, is governed by N.D.C.C. § 37-14-14. That section provides:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in those legal investments authorized by section 21-10-07. All income received from investments is to be utilized only for programs of benefit and service to veterans as defined in section 37-01-40, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon such programs as authorized by law.

N.D.C.C. § 37-14-14 (emphasis supplied.) Under this section fund income may be used only for programs that benefit and serve veterans or their dependants, and are authorized by law.

There can be little doubt that the home is a lawfully authorized program intended for the benefit and service to veterans. See N.D.C.C. ch. 37-15. Likewise, the department, established pursuant to N.D.C.C. § 37-18-01:

. . . to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law, incurred pursuant to hearings covered in section 37-19.1-04 or incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs or the emergency commission.

N.D.C.C. § 37-18-04. I therefore conclude that the home and the department are the type of programs "authorized by law" for which the committee can make expenditures.

Your question also concerns the procedures the committee must follow to expend the projected excess of unbudgeted fund income and the procedures the department or home must follow to spend money not earmarked in House Bill No. 1009.

To expend money, a state agency must have both an appropriation and spending authority.

N.D. Const. art. X, § 12 provides, in part:

1. All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and

shall be paid out and disbursed only pursuant to appropriation first made by the legislature

As used in the North Dakota Constitution, an appropriation "is the setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for the object." State v. Holmes, 123 N.W. 884, 886-87 (N.D. 1909). See also Campbell v. Towner County, 3 N.W.2d 822 (N.D. 1942); Menz v. Coyle, 117 N.W.2d 290 (N.D. 1962).

The constitutional requirement of an "appropriation" is satisfied if moneys received by the state are set apart as a continuing appropriation for a particular specified purpose. Gange v. Clerk of Burleigh County District Court, 429 N.W.2d 429, 436 (N.D. 1988) ("Continuing appropriations are nothing new to the legislative process . . . and we agree with those courts which have held under similar state constitutional provisions that continuing appropriations are a valid 'appropriation first made by the legislature.'"); Gillum v. Johnson, 62 P.2d 1037, reh'g denied 63 P.2d 810 (Cal. 1936); In re Continuing Appropriation, 32 P. 272 (Colo. 1893) ("[N]o set form of words are necessary to constitute an appropriation."); 1990 N.D. Op., Atty Gen. 32. It is my opinion N.D.C.C. § 37-14-14 constitutes a continuing appropriation of the income from the veteran's postwar trust fund. It also contains the spending authority necessary to allow the committee to spend the income.

The committee's specified purpose as outlined in the continuing appropriation language under N.D.C.C. § 37-14-14 is to expend fund income for "programs of benefit and service to veterans . . . as authorized by law." Any expenditure which is authorized by the committee and falls outside of this specified purpose or is not authorized by law, is not valid. See Claim of S.A. Healy Co., 109 N.W.2d 249, 251 (N.D. 1961); Letter from Attorney General Nicholas J. Spaeth to Helen Tracy (April 21, 1988).

In this case fund income must be initially allocated to meet the expenses of those programs already lawfully authorized under House Bill No. 1009. It is the State Treasurer who has the responsibility of informing the committee when the fund income available exceeds the earmarked amount. Once available income exceeds the earmarked amount, the committee may expend the excess on any program authorized by law.

The department's receiving and spending authority under N.D.C.C. § 37-18-04 allows the department to receive moneys from the committee and expend those moneys for lawfully authorized programs of benefit and service to veterans. However, continuing appropriation authority provided under N.D.C.C. § 37-14-14, only allows the committee to make expenditures directly to the home and the department. Expenditures by the home must be handled differently.

N.D.C.C. § 37-15-14 establishes the veterans' home operating fund and directs that all:

[m]oneys arising from the interest received on money derived from the sale

of lands appropriated for the support of the home and from the rental of such lands, moneys received from the United States for the support and maintenance of the home, and all other moneys, income, and collections of public funds arising from any other source or endeavor of the home must be placed in the veterans' home operating fund for the use and maintenance of the veterans' home.

N.D.C.C. § 37-15-14. N.D.C.C. § 37-15-15 provides that "[a]ll moneys withdrawn from the veterans' home operating fund must be withdrawn in accordance with chapters 54-14 and 54-44.1." N.D.C.C. § 54-44.1-09 directs that "[a]ll expenditures of the state and of its budget units of money drawn from the state treasury must be made under authority of biennial appropriation acts, which must be based on a budget as provided by law." Thus, to expend moneys in the veteran's home operating fund the home must obtain authorization from the Legislature similar to House Bill No. 1009.

I trust this answers your questions.

Sincerely,

Nicholas J. Spaeth

jfl

cc: Robert Hanson, State Treasurer